

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.862 of 2018**

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Chandradeo Prasad, S/o Late Jahuri Sao, resident of Village- Panchanpur,
P.S.- Tekari, District- Gaya.

... .. Petitioner/s

Versus

1. Anish Khan
2. Shahjehan Khan.
3. Kashim Khan, All 1 to 3 sons of Late Samshuddin Khan, All resident of
Village- Panchanpur, P.S.- Tekari, District- Gaya.
4. The State of Bihar, through Collector, Gaya, Gaya Collecteriate, P.S. Civil
Lines, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh, Advocate

For the Respondent/s : Mr. Sanjay Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 13-04-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been
filed under Article 227 of the Constitution of India against the
order dated 12.04.2018 passed in Title Suit No. 35 of 2016 by
learned Sub-Judge-1, Gaya whereby a petition dated 18.12.2017
filed by intervenor – respondent 1st party under Order 1 Rule 10



(2) read with Section 151 of the Code of Civil Procedure to add them as party- defendant in the suit has been allowed.

3. Petitioner is the plaintiff who has filed the Title Suit bearing Title Suit No. 35 of 2016 for declaration of his right, title and interest over the suit property. The claim of the petitioner / plaintiff is that the suit land had been settled by the ex-landlady in favour of the ancestor of the petitioner and now in amicable partition entire 12 decimal has been allotted in the share of this petitioner who came in possession over the same but during the Revisional Survey the authorities given wrong area as well as wrongly shown in the name of Anabad Sarv Sadharan as ditch despite the fact that there was no ditch. Due to this fact, the petitioner / plaintiff filed this suit against the State of Bihar and no relief has been claimed against any other.

4. The respondent 1st party (i.e. Respondent Nos. 1 to 3 / private respondents) filed a petition under Order 1 Rule 10 (2) CPC read with Section 151 CPC praying therein to add them as defendants claiming to be settlee of the suit land through Hukumnama and Zamindari rent receipts issued to them and they have constructed their house over the same and they are in joint possession on the suit land which has been allowed by the impugned order. Hence, the petitioner filed this



Miscellaneous Application.

5. Learned counsel for the petitioner has submitted that no relief has been claimed against the intervenors and plaintiff is *dominus litis* of his suit so the plaintiff cannot be compelled to contest against the stranger. The inclusion of intervenors as defendants will change the scope and nature of present suit from simple declaratory title suit into a complex suit and if the intervenors have any claim in the suit property they have the liberty to seek their remedy by filing independent suit and they cannot compel the petitioner to fight with them. Further, it is submitted that evidence of plaintiff has already been started and intervention of intervenors as party defendants in the suit will prejudice the case of the plaintiff / petitioner. Learned counsel for the petitioner has further submitted that the learned trial Court passed the erroneous order allowing the petition of respondent 1st party to implead them as defendants which is liable to be set aside.

6. Learned counsel for the intervenors / respondents 1st party has submitted that respondent 1st party is a necessary party in the suit for the purpose of proper adjudication of the case and order impugned carries no infirmity or illegality for interference by this Court in its supervisory jurisdiction. He



has submitted that the suit land is in the possession of the family of respondent 1st party on which they have made pucca house and resides with their respective families but during the Revisional Survey the same has been recorded as ANABAD SURV SADHARAN and in this regard they have made various representations to the authorities for settlement of the suit land in their favour and the concerned authorities have processed further and are doing needful. Learned counsel for the respondent 1st party has further submitted that the land in question is in the possession of the family of the respondent 1st set since 1938 and they also resides over the said land by construction of their house, so they have valid interest over the said land, hence they are necessary parties for proper adjudication of the suit. Lastly, it has been submitted that there is no error of jurisdiction in the impugned order and the discretion exercised by the learned Court below is not required to be interfered as the same is not unreasonable or perverse.

7. Learned counsel for the petitioner has next submitted that the defendants / respondent 1st party have come out with the case of their own independent title over the suit land and have denied the title of plaintiff and the relief sought for by the plaintiff / petitioner in the suit is no way detrimental



to the right, title and interest of the respondent 1st party and decree to be passed in the suit would not be binding upon them. He has relied upon the judgment of this Court in **Uma Shankar Prasad & Ors. Vs. The State of Bihar** reported in **2016 (2) PLJR 411** in which the decisions of Hon'ble Apex Court in the case of **Razia Begum Vs Sahebzadi Anwar Begum AIR 1958 SC 886** and **Ramesh Hiranand Kundanmal Vs The Municipal Corporation of Greater Bombay 1992 (2) Judgment Today SC 116** have been referred wherein it has been laid down that the person seeking to be added as party in a suit must be the person who would be bound by the result of the suit which may legally affect him by curtailing his legal rights over the suit property.

8. A wide discretion has been conferred on the Court under the provisions of Order 1 Rule 10(2) of CPC. The effectual and complete adjudication and settlement of all the questions involved in the suit is the primary test to decide as to whether the impleadment of any party to a suit is required or not.

9. In **Razia Begum vs. Sahebzadi Anwar Begum & Ors. (AIR 1958 SC 886)** the Hon'ble Supreme had observed that a person may be added as a party to a suit if he should have



a direct interest in the subject matter of the litigation.

10. Even without an application for being impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, who ought to have joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit, be added.

11. The Hon'ble Supreme Court in case of **Mumbai International Airport Private Limited vs Regency Convention Centre and Hotels Private Limited and Ors. (2010) 7 SCC 417** observed that a 'necessary party' is a person who ought to have been joined as a party and whose absence no effective decree could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be proper or necessary party the Court has no jurisdiction to implead him, against the wishes of the



plaintiff.

12. Having heard the learned counsel for the petitioner and on perusal of the impugned order, it appears that the learned trial Court on the basis of the documents on record observed that respondent 1st party may be in possession over the suit land since long and have an interest over the suit land and to avoid multiplicity and complexity of different suits it will be judicious to allow the said petition of respondent 1st party whose right may be properly adjudicated in this suit and no prejudice will be caused to the plaintiff if respondent 1st party are added as defendants of the suit. It is also observed that the other party i.e. State of Bihar has already admits impliedly the illegal possession of respondent 1st party. Accordingly, in the interest of justice, the petition of respondent 1st party to add their name as defendants has been allowed.

13. The learned trial Court in facts and circumstances of the case, in its judicial discretion, by reasoned order allowed the petition of respondent 1st party to add them as defendants in the Suit and there is no reason or ground made out to interfere in exercise of this Court's power under Article 227 of the Constitution of India, with the impugned order passed by the learned trial Court.



14. This Civil Miscellaneous Application is,
accordingly, dismissed.

(Sunil Dutta Mishra, J)

shweta/-

AFR/NAFR	NAFR
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